

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE OF WRITTEN COMMENT PERIOD ON PROPOSED ACTION TO MAKE EMERGENCY REGULATIONS PERMANENT

Article 3.6. Business Partners.

Sections 225.00, 225.03, 225.06, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.27, 225.30, 225.33, 225.36, 225.39, 225.42, 225.45, 225.48, 225.51, 225.54, 225.57, 225.60, 225.63, 225.66, 225.69 and 225.72

On July 31, 2001, the Governor signed SB 46 (Polcanco, Chapter 127), an urgency measure, which authorizes the Department of Motor Vehicles (department) to establish the Business Partnership Automation (BPA) project for the purpose of completing vehicle registration and titling transactions. Effective November 4, 2002, the department adopted, on an emergency basis, regulations in Sections 225.00, 225.03, 225.06, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.27, 225.30, 225.33, 225.36, 225.39, 225.42, 225.45, 225.48, 225.51, 225.54, 225.57, 225.60, 225.63, 225.66, 225.69 and 225.72, in Article 3.6, Chapter 1, Division 1, Title 13, of the California Code of Regulations. The department now proposes to adopt the emergency regulations as permanent with amendments to Sections 225.03, 225.09, 225.18, 225.36, 225.42, 225.45, 225.48, 225.51, and 225.63.

Since 1996, the department has established agreements with a limited number of business partners as part of its BPA pilot program. The proposed regulations will establish agreements between the State of California, Department of Motor Vehicles, and qualified private industry partners for participation in the BPA Program. The business partners will be authorized to electronically transmit vehicle registration and vehicle ownership data from an authorized site, through a public network, to the department's vehicle registration and BPA inventory databases. The agreements provide standards for the electronic transfer of funds for payment of fees by the business partner to the department. The agreements also require the business partner to track and monitor the assignment of license plates and year of expiration stickers, and to monitor the printing and self-issue of registration documents. The reporting of vehicle registration information will apply only to those transactions authorized within each agreement.

Advance notice of the proposed adoption of these regulations has been and/or will be sent to persons affected by the regulations. The proposed regulations are summarized in the Informative Digest.

SUBMISSION OF WRITTEN COMMENTS

The department invites all interested persons or their representatives to submit written comments on the proposal to adopt the above described emergency regulations on a permanent basis. Comments should be addressed or delivered to the contact person identified below.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on February 10, 2003, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567; or cpatrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, (916) 657-5690, or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code Sections 1651 and 1685 in order to implement, interpret or make specific Vehicle Code Section 1685.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code Section 1685 authorizes the department to establish contracts in conformance with the provisions of the Government Code governing personal services contracts, for electronic programs to join the department with qualified private industry partners, to provide services that include processing and payment programs for vehicle registration and titling transactions. Section 1685 defines the three types of private industry partnerships authorized under this section. Section 1685 specifies provisions that the contractual agreements must include, and authorizes the department to establish additional requirements through regulations for the safeguarding of privacy and information protection. Section 1685 permits the department to establish through regulations the maximum amount that a qualified private industry partner may charge its customers in providing the services authorized under the section.

The department proposes to adopt Sections 225.00, 225.03, 225.06, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.27, 225.30, 225.33, 225.36, 225.39, 225.42, 225.45, 225.48, 225.51, 225.54, 225.57, 225.60, 225.63, 225.66, 225.69 and 225.72, to establish the contents of agreements between the State of California, Department of Motor Vehicles, and business partners and provisions for participation in the Business Partnership Automation (BPA) Program. The business partner will be authorized to electronically transmit vehicle registration and vehicle ownership data from an authorized site, through a public network, to the department's vehicle registration and BPA inventory databases. The agreements provide standards for the electronic transfer of funds for payment of fees by the business partner to the department. The agreements also require the business partner to track and monitor the assignment of license plates and year of expiration stickers, and to monitor the printing and self-issue of registration documents. The reporting of vehicle registration information will apply only to those transactions authorized within each agreement.

§225.00. Definitions. Section 225.00 will provide definitions and specify applicability of the definitions to the regulations in Article 3.6.

§225.03. Application Requirements. Section 225.03 will establish application requirements for a BPA permit.

§225.06. Fingerprints. Section 225.06 will establish fingerprint requirements for all business partner owners and employees, for the purpose of criminal background checks.

§225.09. Surety Bond Requirements. Section 225.09 will establish requirements for a surety bond that must be procured by each business partner.

§225.12. Business Partner Contract. Section 225.12 will establish provisions for the contract.

§225.15. BPA Permit Authority. Section 225.15 will establish permit authority for qualified business partners.

§225.18. Cause for Refusal to Enter into a Contract and Issue a Permit. Section 225.18 will establish criteria for business partner owners and employees actions that would cause the refusal to issue a permit.

§225.21. Review of Criminal History Information. Section 225.21 will establish criteria for the review of fingerprints and criminal background checks.

§225.24. Failure to Meet Security Requirements. Section 225.24 will establish consequences for failure to meet security requirements.

§225.27. Transaction Access. Section 225.27 will establish provisions for electronic interface between the types of business partners and the department and payment for the transactions fees collected by each type of business partner.

§225.30. Electronic Fund Transfer. Section 225.30 will establish the provisions for the EFT contract.

§225.33. Use and Retention of Information. Section 225.33 will establish requirements for business partners' use and retention of information processed in the BPA program.

§225.36. Change of First-Line Service Provider. Section 225.36 will establish requirements for reporting to the department any change in the relationship between a first-line service provider and a second-line business partner.

§225.39. Responsibilities of First-Line Service Provider. Section 225.39 will establish the responsibilities of the first-line service provider to conduct monitoring and oversight activities for all of its second-line business partners.

§225.42. Business Partner Changes. Section 225.42 will establish requirements for reporting to the department any changes in the legal or ownership structure of the business partner.

§225.45. Customer Fees. Section 225.45 will establish a limit on fees the business partner can charge its customers per transaction.

§225.48. Transaction Fee. Section 225.48 will establish the monetary amount the department shall collect for the transaction fee mandated by statute.

§225.51. Information Security Requirements. Section 225.51 will establish requirements for protection of the department's information technology assets and data.

§225.54. Inventory Ordering and Shipping. Section 225.54 will establish requirements for ordering and shipping of license plates, year of expiration and month stickers, and special paper for registration transactions.

§225.57. Disposal of Inventory. Section 225.57 will establish procedures for the secure disposal of obsolete, expired and unused inventory.

§225.60. Retention of Business Records. Section 225.60 will establish provisions for the retention of records by the business partners and requirements concerning the availability of these records for departmental review.

§225.63. Audit Requirements. Section 225.63 will contain provisions for periodic compliance audits of business partners by independent audit firms.

§225.66. Investigation and Review. Section 225.66 will contain provisions for review of a business partner's program, and authorize the department to recover costs for oversight of the program.

§225.69. Cancellation or Termination of a BPA Permit and Contract. Section 225.69 will provide procedures for voluntary cancellation of a BPA permit and contract.

§225.72. Voluntary Site Closing. Section 225.72 will establish requirements for voluntarily closing a permit site.

DOCUMENTS INCORPORATED BY REFERENCE

- Business Partner Automation Application, First Line Business Partner, REG4024 (NEW 7/2002)
- Business Partner Automation Application First-Line Service Provider, REG4023 (NEW 7/2002)
- Business Partner Automation Application, Second-Line Business Partner, REG4025 (NEW 3/2002)
- Statement of Personal History, REG4019 (Rev. 11/2002))
- Business Partner Automation Surety Bond, REG866 (Rev. 12/2002))
- Information Security and Disclosure Statement (Firm), EXEC201X (Rev. 2/96)
- Business Partner Automation Program Service Provider Change, REG4022 (Rev. 11/2002)
- Business Partner Automation Program Application for Changes, REG4026 (Rev. 11/2002)
- Business Partner Automation Disclaimer, REG4020 (Rev. 11/2002)
- Accountable Item(s) Order, ADM510 (NEW 3/93)
- Physical Inventory (Non-DMV Entities), DMV175A (Rev. 2/2000)
- Representative Non-Disclosure Statement, REG4028 (NEW 3/2002)
- IT Security Guidelines for Use in BPA Program (October 2002)
- BPA Transaction Procedures and Inventory Requirements Handbook (December 6, 2002)
- Business Partner Automation Program Audit Self Certification, REG4016 (NEW 12/2002)

It would be impractical, cumbersome or unduly expensive to publish these documents in the California Code of Regulations. The forms are currently available to the public upon request from the department's BPA Program Administrator.

BUSINESS REPORTING REQUIREMENT

The regulations contain a requirement for one or more reports that is applicable to businesses. The department finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

FISCAL IMPACT STATEMENT

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: There are start-up and maintenance costs with any business, especially one that requires electronic interfacing. These costs may be costs that would normally be associated with a small or typical business.

With the statute requiring a fee, the regulations establish a non-refundable application fee of \$244, which must be paid every three years. An additional fee of \$130 is due for each site location maintained by the business partner that is added during the initial application process. Fees ranging from \$50 to \$175 are also established in the regulations for amending the BPA contract as a result of changes the business partner's business, including adding a site, changing the business name (DBA), an address change, or change in ownership.

Background checks for business partner owners require each owner to be fingerprinted and complete and sign a five-page Statement of Personal History form for the department to review. A fee is required when the person is being fingerprinted. The fee pays the cost of the FBI (\$24) and DOJ (\$32) checks. To provide a reasonable level of security, business partners are required to exclude employees from processing the department's transactions until an approval letter is received from the department. A list of approved employees is required to be maintained and available for audit. The estimated cost to comply is \$500 per year.

The regulations will require a surety bond above the amount required in statute and that provide coverage to a broader spectrum of information security risk factors than the statute. As each business partner would be acting as an agent of the department, an insurance policy to protect the department against normal liability and damages that may occur during the operation of BPA business is required in the sum of one million dollars. Cost to purchase the insurance varies based on the business partner's credit rating and length of time as a customer with the insurance seller. Estimated cost to comply is between \$500 to \$2,000.

The shipping costs to send inventory would vary based on the volume and type of transactions processed, and distance shipped. The estimated annual cost to ship 50 pounds a month from Sacramento to Southern California (site of the majority of second line business partners) is \$504.

Equipment cost would vary depending on if the business planned to add additional staff or use existing staff and if the business already owned computer equipment that could be modified. The department's IT staff recommends a list of 5 printers available from local retailers to print the registration cards. The estimated cost is \$2,500.

Monitoring and retaining reports and records will require additional or redirected staff resources. Most of the reports will be calculated, maintained and available electronically to the department and the business partner. A security review of the reports and records, adding

and deleting of personnel on the employee list, and space to keep the records available for audit are estimated to cost \$2,000 a year.

To comply with the mandatory requirements established in the statute that requires the department to safeguard privacy and protect the information released and the confidential records in the department's databases, the business partner shall be required to obtain annual compliance audits conducted by an independent auditor. The independent auditor shall provide a written report to the business partner and the department with the source documents sent to the department to review. Based on the estimated time for the department to complete a compliance audit and write the findings report, the independent auditor is estimated to cost \$2,500 at a standard fee of \$250 an hour.

There is a potential of an additional examination, audit or investigation when the department determines that the business partner has failed to provide adequate security controls and privacy measures for the department's records, proprietary assets or inventory. All reasonable costs to reimburse the department for expenses are the responsibility of the business partner.

Collection costs of billing fees were not included in the costing as only 4 out of the 219 business partners have these costs. Arrangements for payment of fees is between the first line business partner service provider and the second line business partner, as the first line business partner service provider pays the department daily for all activity through their interface connection.

The majority of the cost is software fees and charges for an electronic interface provided through a secure public network system. Information provided on a survey completed in November indicated that the vast majority of business partners paid up to five dollars (\$5) per transaction to process the department's transactions. Based on a projected amount of varied vehicle registration processing the business partner completes in a month for a small business and a typical business the following applies: a small business that processes 500 transactions per month times 12 months would incur \$30,000 in electronic processing costs, and a typical business that processes 50,000 transactions per month times 12 months would incur \$3,000,000 in electronic processing costs.

These costs are offset by the fact that business partners charge a fee for their service.

- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action has no effect that would have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action proposed by the department will authorize the department to establish agreements between the department and qualified business partners which allow the business partner to electronically transmit vehicle registration and vehicle ownership data from an authorized site, through a public network, to the department's vehicle registration and BPA inventory databases. On November 2, 2001, the department conducted a survey seeking limited information from existing business partners on current business costs, including overhead and transaction costs charged to customers.

- The adoption of this regulation will not create or eliminate jobs or businesses in the state of California, nor will it result in the elimination of existing businesses, or reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will affect small businesses. The November 2, 2001, survey indicates that approximately 16% of the department's existing business partners are small businesses under Government Code section 11342.610.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The express terms of the proposed action are written in plain English, and are available from the contact person named in this notice. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of the public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at www.dmv.ca.gov, Other Services, Legal Affairs Division, Public Comments web page.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.